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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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20462	7590	10/29/2009		
SMITHKLINE BEECHAM CORPORATION				
CORPORATE INTELLECTUAL PROPERTY-US, UW2220				
P. O. BOX 1539				
KING OF PRUSSIA, PA 19406-0939				
EXAMINER				
PAGONAKIS, ANNA				
ART UNIT		PAPER NUMBER		
1628				
NOTIFICATION DATE		DELIVERY MODE		
10/29/2009		ELECTRONIC		

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

US\_cipkop@gsk.com

**Advisory Action  
Before the Filing of an Appeal Brief**

**Application No.**

10/587,790

**Applicant(s)**

BAMBOROUGH ET AL.

**Examiner**

ANNA PAGONAKIS

**Art Unit**

1628

**--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --**

THE REPLY FILED 19 October 2009 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☒ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

- a) ☒ The period for reply expires 3 months from the mailing date of the final rejection.  
b) ☐ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.  
Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**NOTICE OF APPEAL**

2. ☒ The Notice of Appeal was filed on 19 October 2009. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

**AMENDMENTS**

3. ☐ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because  
(a) ☐ They raise new issues that would require further consideration and/or search (see NOTE below);  
(b) ☐ They raise the issue of new matter (see NOTE below);  
(c) ☐ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or  
(d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: \_\_\_\_\_. (See 37 CFR 1.116 and 41.33(a)).

4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).  
5. ☐ Applicant's reply has overcome the following rejection(s): \_\_\_\_\_.  
6. ☐ Newly proposed or amended claim(s) \_\_\_\_\_ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).  
7. ☒ For purposes of appeal, the proposed amendment(s): a) ☐ will not be entered, or b) ☒ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.  
The status of the claim(s) is (or will be) as follows:  
Claim(s) allowed: \_\_\_\_\_.  
Claim(s) objected to: \_\_\_\_\_.  
Claim(s) rejected: 1-13 and 19-22.  
Claim(s) withdrawn from consideration: 18 and 23.

**AFFIDAVIT OR OTHER EVIDENCE**

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).  
9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing a good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).  
10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

**REQUEST FOR RECONSIDERATION/OTHER**

11. ☐ The request for reconsideration has been considered but does NOT place the application in condition for allowance because: \_\_\_\_\_.  
12. ☐ Note the attached Information Disclosure Statement(s). (PTO/SB/08) Paper No(s). \_\_\_\_\_.  
13. ☐ Other: \_\_\_\_\_.

/Brandon J Fetterolf/  
Primary Examiner, Art Unit 1642

Continuation of 11. does NOT place the application in condition for allowance because:

Applicant's remarks presented in the after-final amendment regarding the 112 rejection has considered and entered into the record, but are not persuasive.

With regard to Applicant's traversal of 112 rejection stating that the assays presented in the specification are art recognized assays for determining inhibitory activity of a compound against the p38 kinase and further Applicant states that the Examiner is suggested to consider the many references previously forwarded to the office. This is not found persuasive. The response made of record 4/4/2009 did not allege or present evidence that the assays set forth in the instant specification are art accepted. Applicant simply states that the Examiner should refer to the references provided by the office. It seems that Applicant has not reviewed which of the submitted references support this allegation. Applicant fails to advance any reasons or evidence, aside from Counsel's own allegation, in support of this position that no motivation exists in the present obviousness rejection. This assertion by Counsel is an unsupported allegation and fails to take the place of evidence in the record. Statements of this nature are clearly unpersuasive in accordance with guidance provided at MPEP 2145, which states "The arguments of counsel cannot take the place of evidence in the record."

Applicant's state that the signaling pathway of p38 kinase has been extensively studied and is known for the treatment of a wide range of diseases, including inflammation. Applicant seems to have misconstrued an essential element of the basis of the rejection. Though this activity of p38 kinase is noted, Applicant has not demonstrated that the instantly compounds in fact function as inhibitors of p38 kinase, Applicant is again guided to pages 5-7 of the final rejection mailed on 7/15/2009.

The rejection is maintained for the reasons above and those already made of record.